
Status & Remarks

The application presently contains the following claims:

<i>Independent Claim #</i>	<i>Dependent Claim #s</i>
1	2-15; 16-19 (withdrawn)
20 (withdrawn)	21-26 (withdrawn)
27 (withdrawn)	28 (withdrawn)

No claims are amended in this amendment response. The applicant's attorney provisionally elects the invention defined by the claims of Group I (claims 1-15) and claims 16-28 are provisionally withdrawn, subject to reconsideration by the examiner, the elected claims 1-15 being made with traverse.

The examiner has represented that the patent application as filed contains four inventions: namely

- (I) Claims 1-15, drawn to an excavator tooth system, classified in class 37, subclass 453;
- (II) Claims 16-19, drawn to a lip, classified in class 37, subclass 446;
- (III) Claims 20-26, drawn to a lock, classified in class 37, subclass 455; and
- (IV) Claims 27-28, drawn to a method of securing a wear member, classified in class 37, subclass 195.

The examiner has provided support for the restriction requirement between inventions I and II in that the inventions are related as subcombinations that are distinct from each other as they are shown to be separately usable because invention I has separate utility such as for use with a grinder or milling tool. The applicant's attorney would respectfully request the examiner to reconsider this position in light of the following observation. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. However, the subcombinations are not distinct from each other as they are not separately usable. The examiner has represented invention I has separate utility such as for use with a grinder or milling tool. As explained in "Mechanical

alloying and milling” by C. Suryanarayana, as published in Progress in Materials Science, Volume 46, in 2001 on page 9, and attached to this Amendment as Appendix A, grinding is typically an abrasive machining process that involves “mainly shear stresses and chip formation”. Further, the term milling includes more complex triaxial and sometimes hydrostatic stress states. The excavator tooth system of Invention I does not provide for any means of abrasion or complex triaxial or hydrostatic stress states, and therefore would not be appropriately utilized with a grinding or milling tool. The invention of the applicant would not work in such a configuration. It is additionally submitted that since the invention drawn to an excavator tooth system as well as the subcomponent of the lip will require the examiner to look in essentially the same art groups, and therefore, no significant amount of additional searching will be required. The examiner is respectfully requested to consider the merits of this argument and traversal of the restriction of the inventions of Inventions I and II.

The examiner has additionally restricted the inventions of Invention I and III indicating that they are related as combination and subcombination. The applicant’s attorney does concur with that part of the analysis. However, it is respectfully submitted that the subcombination has separate utility in devices which the examiner has offered as for use in attaching an adaptor to a bucket or digging implement. With all due respect, the subcombination is essential to the combination. The details of the subcombination are found in the independent claims of the combination, and in those instances, the restriction requirement is indicated to NOT be applicable. This is clearly taught in MPEP 806.05(c)(II). The examiner is respectfully requested to review this section for the applicability to the instant invention. It is additionally submitted that since the geometry of the locking device by itself as well as its use with the excavator tooth system will require the examiner to look in essentially the same art groups, and therefore, no significant amount of additional searching will be required. The examiner is respectfully requested to consider the merits of this argument and traversal of the restriction of the inventions of Inventions I and III.

The examiner has further restricted the Inventions of I and IV indicating that they are related as process and apparatus for its practice. The applicant’s attorney does concur with that part of the analysis. However, it is respectfully submitted that the alternative process that can be used to create the apparatus stated by the examiner, namely mounting a wear member to a nose without partially misaligning the wear member with the lock aperture, does not *materially* differ from the claimed process. The limitation of partially

misaligning the wear member with the lock aperture is merely a small component of the process as claimed. Removing this small component does not materially change the process, and will require the examiner to look in essentially the same art groups. Therefore, no significant amount of additional searching will be required by the examiner. The examiner is respectfully requested to consider the merits of this argument and traversal of the restriction of the inventions of Inventions I and IV.

Request for Reconsideration

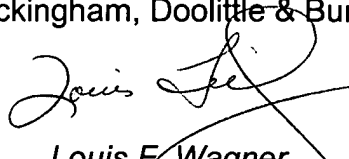
Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

It is respectfully submitted that no new additional searching will be required by the examiner. A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

It is respectfully submitted that all references identified by the examiner have been distinguished in a non-obvious way. If the examiner believes that a telephonic conversation would facilitate a resolution of any and/or all of the outstanding issues pending in this application, then such a call is cordially invited at the convenience of the examiner.

Buckingham, Doolittle & Burroughs, LLP
50 S. Main St.
P.O. Box 1500
Akron, Ohio 44309-1500
(330) 258-6453 (telephone)
(330) 252-5452 (fax)
Attorney Docket #: 51373.0009

Respectfully Submitted,
Buckingham, Doolittle & Burroughs, LLP



Louis F. Wagner
LWagner@bdblawn.com
Registration No.: 35,730